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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,490	02/24/2004	Bruno Marchevsky	05-524-A	9881

20306 7590 12/05/2005

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EXAMINER

GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
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2688

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/785,490

Applicant(s)

MARCHEVSKY, BRUNO

Examiner

Jean A. Gelin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,3 and 5-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3 and 5-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                             |                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/05/05</u> | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. This is in response to the Applicant's arguments and amendments filed on September 28, 2005 in which claims 2, 3, 5, 6, 8, 9, and 11 have been amended, and claims 1 and 4 have been canceled. Claims 2, 3, 5-12 are currently pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 2, 3, 5, 8, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raith (US 6,493,550) in view of Zyren (US 6,377,608).

Regarding claim 3, 9, and 11, Raith teaches in apparatus for detecting the presence of a wireless LAN (detecting the presence of a private network, which is connected to LAN, col. 3, lines 1-3, col. 5, lines 14-24) comprising: a radio frequency receiver for receiving radio frequency signals (col. 5, lines 31-36); and a controller having associated programming for controlling the receiver and measuring and analyzing the energy of the received radio frequency signals for the purpose of determining if the radio frequency signals indicate the presence of a wireless LAN (i.e., the mobile makes signal strength measurements, col. 5, lines 14-49).

Raith does not specifically teach if the radio frequency signals include pulses having a duration and periodicity appropriate for a beacon issuing from a WLAN access point.

However, the preceding limitation is known in the art of communications. Zyren teaches a beacon generator is installed in the vicinity of an access point of the WLAN infrastructure, the generator is periodically generate a pulsed beacon signal to indicate the presence of the WLAN (col. 5, lines 50-64); the hop sequence and the system clock data are embedded in the beacon modulation, which inherently include duration and periodicity, (col. 6, lines 1-67). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to implement the technique of Zyren within the system of Raith in order to disable the transmitter of the ad hoc radio detecting the beacon for as long as the radio is within range of the beacon, and to prevent interference.

Regarding claim 2, Raith in view of Zyren teaches all the limitation above. Zyren further teaches determines if the received radio frequency signals includes pulses having a duration within an established minimum and maximum (i.e., figs. 9, 10, and 11 illustrate pulse duration and periodicity with lower and upper ends, col. 5, lines 13-32).

Regarding claim 5, Raith in view of Zyren teaches all the limitation above. Zyren further teaches the periodicity is approximately 100 ms (figs. 9 and 11).

Regarding claim 8, Raith in view of Zyren teaches all the limitation above. Raith further teaches wherein the radio frequency receiver and the controller are contained within a handheld unit (i.e., mobile station 350).

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4. Claim 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raith (US 6,493,550) in view of Zyren (US 6,377,608), further in view of Mauney (US 6,484,027).

Regarding claim 6, Raith in view of Zyren teaches all the limitation above except displaying an indication of the presence of a beacon issuing from a WLAN access point.

However, the preceding limitation is known in the art of communications. Mauney teaches the wireless handset includes a signal strength or distance indicator to provide to the user an approximate indication of signal strength or distance (i.e., the presence of signal strength corresponds to the presence of a beacon issuing from a wireless access in the area, col. 29, lines 1-67 and col. 31, line 66 to col. 32, line 11). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Mauney within the system of Raith and Zyren in order to provide a wireless handset that is inexpensive to operate and that includes enhanced features and capabilities.

Regarding claims 7, 10, and 12, Raith in view of Zyren further in view of Mauney teaches all the limitation above. Mauney further teaches the display comprises a plurality of LEDs to indicate the presence WLAN (i.e., displaying the signal strength of each object that is within range is equivalent to the claimed invention, col. 29, lines 51-67).

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 3, 8, 9, 11 are provisionally rejected under the judicially created doctrine of double patenting over claims 11, 12, 32, 33, 47, and 48 of copending Application No. 10/443,639. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: an apparatus for detecting the presence of a wireless LAN comprising (claim 11, lines 1-2): a radio frequency receiver for receiving radio frequency signals (claim 11, line 3); and a controller having associated programming for controlling the receiver and measuring and analyzing the energy of the received radio frequency signals for the purpose of determining if the radio frequency signals are being produced by noise generating electronic device (claim 11, lines 4-7).

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7. Claims 2, 5 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11, 12, 32, 33, 47, and 48 of U.S.

Application No. 10/443,639 in view of Zyren (US 6,377,608).

Regarding claim 2, the U.S. Application No. 10/443,639 claims all the limitations as recited above except the radio frequency signals includes pulses having a duration within an established minimum and maximum.

However, the preceding limitation is known in the art of communications. Zyren teaches a beacon generator is installed in the vicinity of an access point of the WLAN infrastructure, the generator is periodically generate a pulsed beacon signal to indicate the presence of the WLAN (col. 5, lines 50-64); the hop sequence and the system clock data are embedded in the beacon modulation, which inherently include duration and periodicity, (col. 6, lines 1-67) and figs. 9, 10, and 11 illustrate pulse duration and periodicity, col. 5, lines 13-32.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to implement the technique of Zyren within the system of Raith in order to disable the transmitter of the ad hoc radio detecting the beacon for as long as the radio is within range of the beacon, and to prevent interference.

Regarding claim 5, U.S. Application No. 10/443,639 in view of Zyren teaches all the limitation above. Zyren further teaches the periodicity is approximately 100 ms (figs. 9 and 11).

8. Claim 6, 7, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Application No. 10/443,639 in view of Zyren (US 6,377,608), further in view of Mauney (US 6,484,027).

Regarding claim 6, U.S. Application No. 10/443,639 in view of Zyren teaches all the limitation above except displaying an indication of the presence of a beacon issuing from a WLAN access point.

However, the preceding limitation is known in the art of communications. Mauney teaches the wireless handset includes a signal strength or distance indicator to provide to the user an approximate indication of signal strength or distance (i.e., the presence of signal strength corresponds to the presence of a beacon issuing from a wireless access in the area, col. 29, lines 1-67 and col. 31, line 66 to col. 32, line 11). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Mauney within the system of U.S. Application No. 10/443,639 and Zyren in order to provide a wireless handset that is inexpensive to operate and that includes enhanced features and capabilities.

Regarding claims 7, 10, and 12 U.S. Application No. 10/443,639 in view of Zyren further in view of Mauney teaches all the limitation above. Mauney further teaches the display comprises a plurality of LEDs to indicate the presence WLAN (i.e., displaying the signal strength of each object that is within range is equivalent to the claimed invention, col. 29, lines 51-67).



**Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Skelton et al.

US 6,067,016

5/25/2000

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGelin  
November 30, 2005

**JEAN GELIN  
PRIMARY EXAMINER**

*Jean Allard Gelin*